

The Appeals Board agrees with the Administrative Law Judge's conclusion that claimant failed to prove it is more probably true than not that he sustained personal injury by accident arising out of and in the course of employment with the respondent. Because

there were no witnesses to the accident and respondent's witnesses contradicted claimant's testimony in key areas, claimant's credibility is absolutely crucial to the claim. The claimant failed to persuade the Administrative Law Judge that he was a credible witness and that the alleged accident occurred as he testified.

Administrative Law Judge Barnes was in the enviable position of being able to personally observe the witnesses and assess their demeanor and credibility. In this instance, the Appeals Board gives some deference to the Judge's implicit finding concerning claimant's credibility. Respondent's witnesses presented evidence which contradicted claimant's allegations concerning how the alleged accident occurred, the alleged notice to others, and nature of the alleged injury. Respondent's witnesses also testified how claimant had threatened to extract revenge from the respondent as a result of his termination. When considering the entire evidentiary record, the Appeals Board finds that claimant has failed to prove his entitlement to workers compensation benefits.

Based upon the above finding, the issue of whether claimant provided respondent with timely notice of accident is rendered moot.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated November 15, 1996, signed by Administrative Law Judge Jon L. Frobish for Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1997.

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BOARD MEMBER

c: William L. Phalen, Pittsburg, KS  
Kim R. Martens, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director